

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

STATE OF ILLINOIS, by its Attorney General)	
LISA MADIGAN,)	
)	
Plaintiff,)	
)	
v.)	
)	
DAICEL CHEMICAL INDUSTRIES, LTD.,)	
EASTMAN CHEMICAL COMPANY,)	No. 02CH19575
HOECHST AKTIENGESSELLSCHAFT,)	
NUTRINOVA NUTRITION SPECIALTIES)	<i>Parens Patriae</i> (Class Action)
& FOOD INGREDIENTS, GMBH,)	
HOECHST CELANESE CORPORATION, a/k/a)	
CNA HOLDINGS, INC., NUTRINOVA, INC.,)	
CELANESE AG, NIPPON GOHSEI, a/k/a)	
NIPPON SYNTHETIC CHEMICAL INDUSTRY)	
CO., LTD., and UENO FINE CHEMICALS)	
INDUSTRY, LTD.,)	
)	
Defendants.)	

NOTICE OF SETTLEMENT OF CLASS ACTION

TO: ALL INDIVIDUAL RESIDENTS OF ILLINOIS WHO PURCHASED PRODUCTS CONTAINING SORBIC ACID, POTASSIUM SORBATE, SODIUM SORBATE, OR CALCIUM SORBATE BETWEEN JANUARY 1, 1979 TO DECEMBER 31, 1997:

If you bought products such as certain food products, shampoos or other products that contained sorbic acid, potassium sorbate, sodium sorbate or calcium sorbate (collectively “Sorbates”) between January 1, 1979 to December 31, 1997 (the “Relevant Period”), please read this Notice carefully. It contains important information about your rights concerning the settlement of consumer claims against Daicel Chemical Industries, Ltd., Eastman Chemical Company, Hoechst Aktiengesellschaft, Nutrinova Nutrition Specialties & Food Ingredients, GmbH, Hoechst Celanese Corporation, a/k/a CNA Holdings, Inc., Nutrinova, Inc., Celanese AG, Nippon Gohsei, a/k/a Nippon Synthetic Chemical Industry Co., Ltd., and Ueno Fine Chemicals Industry, Ltd. (collectively “the Defendants”), which are manufacturers of Sorbates.

- Pursuant to an Order of the Honorable Sophia H. Hall of the Circuit Court of Cook County, and in accordance with §5/2-803 of the Illinois Code of Civil Procedure, YOU ARE HEREBY NOTIFIED:

- Of the preliminary approval of Settlements in the above-captioned Litigation, under which the Defendants have agreed to pay in settlement of all claims between the parties a total of \$1,610,000 in cash.
- Of the certification of a plaintiff Settlement Class which is comprised of all natural persons who purchased Sorbates indirectly during the Relevant Period.
- Of your right to comment on, support or object to the terms of the settlement.
- Of your right to request exclusion from the Settlement.
- That the Court will hold a hearing (“Fairness Hearing”) on January 13, 2005 at 10:30 a.m., in Courtroom 2301, of the Circuit Court of Cook County, County Department, Chancery Division, at the Richard J. Daley Center, 50 W. Washington, Chicago, Illinois 60602, to consider the fairness, reasonableness and adequacy of the proposed Settlements and other matters. If you do not request exclusion from the proposed Settlements and you serve the Court and Counsel with timely notice, as provided in Section V(A) below, you have the right to appear at the Fairness Hearing and comment on whether the proposed Settlement and other matters being considered should be finally approved by the Court.

This Notice is not an expression of any opinion by the Court as to the merits of the claims or defenses by any of the parties to the Litigation. The purpose of this Notice is to summarize the Litigation, to inform you of the Settlement, and to notify you of the rights and options you may have in connection with the Settlements. The provisions of this Notice are qualified and subject in their entirety to the terms of the Settlement Agreements. (Copies of those Agreements can be found at http://www.illinoisattorneygeneral.gov/consumers/antitrust_settlements.html.)

Definitions

To help you better understand this Notice and your rights in the Settlement, here are definitions of some of the more important terms that appear in this Notice.

Court: The Circuit Court of Cook County, where the Litigation is pending.

Litigation: The lawsuit filed by the State of Illinois on behalf of itself, its political subdivisions, and the natural person consumers who indirectly purchased Sorbates, alleging violations of the Illinois Antitrust Act which is being settled by the Settlements described in this Notice.

Notice: This summary of the Litigation and the terms of the Settlements and the Fairness Hearing on the Settlements.

Relevant Period: January 1, 1979 to December 31, 1997.

Settlement Class: The plaintiff Settlement Class as conditionally certified by the Court as defined in Section II. below.

Settlement Group: The State of Illinois, its political subdivisions and the Settlement Class.

Settlement Agreements: The agreements between Illinois and the Defendants resolving the allegations in this Litigation and comprising all terms and conditions for terminating this lawsuit.

Settlement Fund: The \$1,610,000 for natural persons and the State and its political subdivisions that has been created from the money paid by the Defendants to settle this Litigation and is being held by the State of Illinois. The money, less notice and claims administration costs and attorneys' fees, will be available for *cy pres* distribution to non-profit corporations and government agencies to benefit indirect purchasers of Sorbates through health-related programs.

Settlements: Resolution of the allegations contained in Illinois' Revised First Amended Complaint filed in the Litigation as described in this Notice.

Sorbates: Sorbic acid, potassium sorbate, sodium sorbate or calcium sorbate.

The Defendants: Daicel Chemical Industries, Ltd., Eastman Chemical Company, Hoechst Aktiengesellschaft, Nutrinova Nutrition Specialties & Food Ingredients, GmbH, Hoechst Celanese Corporation, a/k/a CNA Holdings, Inc., Nutrinova, Inc., Celanese AG, Nippon Gohsei, a/k/a Nippon Synthetic Chemical Industry Co., Ltd., and Ueno Fine Chemicals Industry, Ltd.

I. LITIGATION BACKGROUND

In October 2002, the State of Illinois sued the Defendants alleging that the Defendants during the Relevant Period had engaged in a conspiracy to fix and maintain the price of sorbates sold in the United States and elsewhere, and to coordinate price increases for the sale of sorbates throughout the Relevant Period. Illinois further alleged that, as a result of this unlawful conduct, the prices for Sorbates were artificially raised. As a result, Illinois alleged, persons who purchased sorbates at the artificially high prices arising from Defendants' unlawful activity, in turn, passed on all or part of the artificially high cost of sorbates to their own customers, who similarly passed on all or part of the artificially high cost to end-users of foods, beverages, and other products containing Sorbates. Such End-users and Non-end-users, thus, allegedly paid all or part of the artificially high cost of sorbates arising from Defendants' conspiracy, and were, thereby, injured.

Although the State of Illinois believes that its claims have merit and that the evidence developed to date supports the claims, it also recognizes the expense and risk of continuing to prosecute the Litigation through trial and appeals, and the benefit of getting money more quickly to non-profit and government organizations that can benefit those harmed by the alleged conspiracy. The Defendants deny the merit of these allegations and believe they have meritorious defenses. At the same time, the Defendants also are also aware of the expense and risks in continuing to defend the Litigation.

Therefore, Illinois and the Defendants entered into settlement discussions in 2003. After extended discussions and intense negotiations, Illinois and the Defendants reached the Settlements discussed in this Notice.

Illinois considers the Settlements to be fair, reasonable, and adequate, and in the best interests of the individuals and government sub-divisions that comprise the Settlement Group. This Notice alerts you to the Settlements and their significant terms, to assist you in determining whether you want to object to or exclude yourself from the Settlements or to remain part of the Settlement Group.

II. DEFINITION OF THE SETTLEMENT CLASS

The Court has conditionally certified the plaintiff Settlement Class defined as follows:

All natural person consumers within Illinois where such a class action may be brought who purchased Sorbates indirectly from January 1, 1979 through December 31, 1997.

III. SUMMARY OF THE PROPOSED SETTLEMENTS

The Settlement described in this Notice resolves the Litigation brought by Illinois against the Defendants. The Court granted preliminary approval of the Settlements on June 3, 2004. The Settlements are not yet final. If enough consumers elect to exclude themselves from the Settlement Group, the Settlements will not be finalized and no money will be distributed until another resolution is reached in this matter. This Notice is meant to give you the information that will allow you to decide if you want to accept the Settlements, object to the Settlements, or exclude yourself from the Settlements.

A. The Settlements' Primary Terms

Defendants Daicel Chemical Industries, Ltd., Eastman Chemical Company, Hoechst Aktiengesellschaft, Nutrinova Nutrition Specialties & Food Ingredients, GmbH, Hoechst Celanese Corporation, a/k/a CNA Holdings, Inc., Nutrinova, Inc., Celanese AG, and Nippon Gohsei, a/k/a Nippon Synthetic Chemical Industry Co., Ltd. have agreed to pay \$1,560,000 to Illinois to settle the Litigation. In return for this payment, if the Settlements are approved, Illinois will dismiss the Litigation and release the claims of the Settlement Group against these defendants as described in the Settlement Agreement with these defendants and in the proposed final judgment. Once the Settlement is Final, no individual members of the Settlement Group who did not exclude themselves from this litigation may bring an antitrust or similar lawsuit against these defendants for claims relating to the circumstances involved in the Litigation.

Defendant Ueno Fine Chemicals Industry, Ltd. ("Ueno") has agreed to pay \$50,000 to Illinois to settle the Litigation. In return for this payment, if the Settlements are approved,

Illinois will dismiss the Litigation and release the claims of the Settlement Group against Ueno as described in the Settlement Agreement with Ueno and in the proposed final judgment. Once the Settlement is Final, no individual members of the Settlement Group who did not exclude themselves from this litigation may bring an antitrust or similar lawsuit against Ueno for claims relating to the circumstances involved in the Litigation.

B. Distribution of the Settlement Fund

The Settlement Agreements between Illinois and the Defendants provide for the distributing the Settlement Fund, after payment of notice and administrative costs and fees and costs associated with litigation and settlement, pursuant to a *cy pres* distribution plan (to be submitted to the Court with the Motion for Final Approval of the Settlements) to charitable organizations and/or governmental organizations, with express conditions ensuring that the funds be used to further health and fitness or nutrition-related causes. The funds to be distributed under the *cy pres* plan may not supplant existing or anticipated funding of such programs. *Cy pres* recipients of these funds will not be able to substitute the funds obtained through the distribution to replace those already budgeted.

IV. APPLICATION FOR PAYMENT OF COUNSEL FEES AND EXPENSES

The Settlement Agreements provide that Illinois may apply to the Court for a portion of the Settlement Fund to be awarded to Illinois for payment of attorneys' fees, expenses and costs in an amount to be approved by the Court. Such payment shall be used by the Illinois Attorney General for one or more of the following purposes to be chosen at her sole discretion: a. Reimbursement of attorneys' fees and expenses incurred by Illinois; b. Antitrust enforcement by the Attorney General of Illinois; c. Deposit into a state antitrust or consumer protection account, (e.g., revolving account, trust account), for use in accordance with Illinois law governing that account; d. Deposit into a fund exclusively dedicated to assisting the Attorney General of Illinois to defray the cost of experts, economists, and consultants in antitrust investigations and litigations.

V. PARTICIPATION OPTIONS FOR SETTLEMENT GROUP MEMBERS

If you are a resident of Illinois and you purchased products containing Sorbates, you may receive the benefit of, and you will be bound by the terms of, the proposed Settlements described above, upon approval of the Settlement Agreements by the Court. You have the following options:

1. You may remain a member of the Settlement Group; or
2. You may exclude yourself from the Settlement Group.

The following describe the effects of your choice:

- A. If you choose to **Remain** in the Settlement Group:

1. You do not have to take any action to remain a member of the Settlement Group. If the Settlements are approved by the Court, then you will be bound by the judgment entered by the Court when the Settlements become final and your claims against the Defendants will be forever released.

2. You may (but are not required to) file written comments in favor of or in opposition to the Settlements or the fee and cost applications.

a. Any written comments on the Settlements or fee and cost applications (i) must include your name, address, telephone number, and the name and number of the Litigation (State of Illinois v. Daicel Chemical Industries, Ltd., et al., No. 02CH19575); (ii) must be signed by you; and (iii) must be received by the court and the counsel listed below on or before December 15, 2004. Written comments, letters, and other materials postmarked after this date will not be considered by the Court.

b. Written comments must be sent to:

(i) Office of the Clerk, Circuit Court of Cook County, County Department, Chancery Division, Richard J. Daley Center, 50 W. Washington, Chicago, Illinois 60602

(ii) Counsel for the State of Illinois: Blake Harrop, Antitrust Bureau, Office of the Attorney General of Illinois, 100 W. Randolph, Chicago, IL 60601

(iii) Liaison Counsel for defendants: Arthur Hahn, Katten Muchin Zavis Rosenman, 525 West Monroe Street, Suite 1600, Chicago, IL 60661-3693

(iv) Counsel for Ueno Fine Chemicals Industry, Ltd.: Sanford M. Pastroff, Sonnenschein Nath & Rosenthal, LLP, 8000 Sears Tower, 233 S. Wacker Drive, Chicago, IL 60606

(v) Counsel for Hoechst AG, Nutrinova Nutrition Specialties & Food Ingredients, GmbH, Hoechst Celanese Corporation, a/k/a CNA Holdings, Inc., Nutrinova, Inc., Celanese AG: Sheldon Solow, Kaye Scholer LLP, 3 First National Plaza, Suite 4100, 70 West Madison St., Chicago, IL 60602-4231

3. You may appear and be heard at the Court's Fairness Hearing to consider the final approval of the Settlements. The procedures for making an appearance at the Fairness Hearing are described in Section VI of this Notice.

B. If you choose to **Exclude** yourself from the Settlement Group:

1. You will not be bound by the Court's judgment finally approving the Settlements, your claims against these Defendants will not be released, and you will retain the option to pursue your claim, to the extent otherwise permitted by law and subject to all applicable limitations, on an individual basis, at your own expense against the Defendants, and the Defendants will retain all defenses against and counterclaims to any such claims.
2. You will not be eligible to comment on the fairness, adequacy and reasonableness of the Settlements, nor will you be eligible to appear and be heard at the Fairness Hearing.
3. To exclude yourself from the Settlement Group, you must submit a valid and timely written request for exclusion. Your exclusion request must include your name, address, telephone number, and the name and number of this Litigation (State of Illinois v. Daicel Chemical Industries, Ltd., et al., No. 02CH19575). You must submit your request for exclusion to:

Blake Harrop
Antitrust Bureau
Office of the Attorney General
100 W. Randolph
Chicago, IL 60601

Your exclusion request must be postmarked by October 18, 2004. If your request for exclusion is not postmarked by October 18, 2004, or does not include the information required by this Section V(B), it will not be valid, and you will remain a member of the Settlement Group. Anyone who does not follow the steps set forth in this Section to exclude him or herself from the Settlement Group shall be deemed to have waived and forever foreclosed his or her right to exclude himself or herself from the Settlements.

VI. FAIRNESS HEARING TO CONSIDER FINAL APPROVAL OF THE PROPOSED SETTLEMENTS AND APPLICATION FOR COUNSEL FEES AND EXPENSES

The Court will hold a Fairness Hearing on January 13, 2005 at 10:30 a.m., in Courtroom 2301, of the Circuit Court of Cook County, County Department, Chancery Division, at the Richard J. Daley Center, 50 W. Washington, Chicago, Illinois 60602, to determine whether or not:

- (1) the proposed settlements should be finally approved;
- (2) the Settlement Group's claims should be dismissed,
- (3) the application for an award of attorneys' fees and reimbursement of costs should be

approved; and

(4) the plan of distribution for the Settlement Fund and the *cy pres* distribution plan should be finally approved.

The Fairness Hearing date may be changed without further written or published notice. **You are not required to attend the Fairness Hearing.**

Any member of the Settlement Class may appear and be heard at the Fairness Hearing. However, to do so, you must use the following procedure:

1. You must file with the Clerk of the Circuit Court of Cook County, County Department, Chancery Division, at the Richard J. Daley Center, 50 W. Washington, Chicago, Illinois 60602, (a) a notice of your intent to appear at the Fairness Hearing, (b) a statement indicating the basis for your support of or opposition to the Settlements or any other matter that may be taken up the Court in connection with the Settlement, and (c) any documentation in support of your position.
2. You must serve, either in person or by mail, on all counsel listed in Section V(A)(2)(b) above, complete copies of all the materials filed with the clerk as required in the preceding paragraph.
3. The filings with the Clerk and service on counsel required by the two preceding paragraphs must be received by December 15, 2004. If these materials are not filed and served by this date, then they will not be considered by the Court, and you will not be permitted to be heard at the Fairness Hearing. Only persons who have filed and served valid and timely papers shall be entitled to be heard at the Fairness Hearing.

Any member of the Settlement Group who has not requested exclusion may appear at the Fairness Hearing, provided that member has complied with the procedures set forth in this Section.

VII. ADDITIONAL INFORMATION

This Notice is only a summary of the Litigation and the Settlements. More detailed information, including copies of the complaint, the Settlement Agreements and the papers filed in support of the preliminary approval of the Settlement, and the Court's order preliminarily approving the Settlement may be viewed at:

http://www.illinoisattorneygeneral.gov/consumers/antitrust_settlements.html

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE OR THIS LITIGATION. ALL INQUIRIES SHOULD BE DIRECTED TO COUNSEL FOR THE STATE OF ILLINOIS.

BY ORDER OF THE COURT
THE HONORABLE SOPHIA H. HALL
CIRCUIT COURT OF COOK COUNTY